

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
REPLY BRIEF**

ORIGINAL

77-1221

United States Court of Appeals
For the Second Circuit

UNITED STATES OF AMERICA,

Appellee,

-against-

FRANCIS E. KING,

Appellant.

*On Appeal From The United States District
Court For The Eastern District Of New York*

REPLY BRIEF

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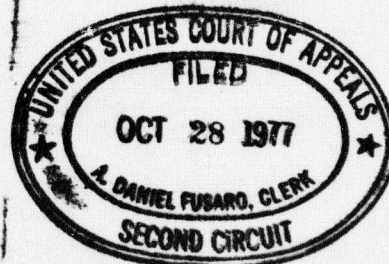


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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Docket No. 77-1221

Appellee,

- against -

FRANCIS E. KING,

Appellant

REPLY BRIEF

RESTATEMENT OF PERTINENT FACTS

FRANK KING, a victim of two indictments, 75 Cr. 973 (December 22, 1975) i.e., conspiracy to violate civil rights for which he was acquitted and 76 Cr. 482 (July 28, 1976) income tax violations for which he was found guilty for violation of Code §7206(1) for the year 1970 and Code §7201 and 7203 for 1973 and material misstatement by allegedly falsely asserting that he timely filed federal income tax returns for each of three immediately preceeding years on a request for an extension (26 U.S.C. 7206(1)). Identical testimony was elicited and used in each trial.

The government's agent with regard to the opening year, 1970, allegedly based on testimony of Catherine King, FRANK KING'S first wife, gave the defendant credit for no cash on hand at the beginning of 1970 (433-434). The witness on page

436 responding to a question of Assistant United States Attorney Puccio stated that the zero balance as at January 1, 1970 was based on his investigation, documents and records admitted here. It should be noted that Assistant United States Attorney Puccio litigated both prosecutions and that the Internal Revenue Service agents (Weinstein and Valenti) were noticed to be present at both trials.

At the original trial 75 Cr. 973, the following testimony was elicited from government witnesses with regard to monies received in 1969 by the defendant. ,

1. Receipt of \$1,500 (Papa case) March 1969, testimony of McLean (589, 592) and Viera (678-679).
2. Receipt of \$625.00 and \$100.00 (Caruso case) June 1969, testimony of Viera (684-685, 699) and McLean (627-628).
3. Receipt of \$2500.00 (Figliolo case) June 1969, testimony of Viera (692) and McLean (619).
4. Receipt of \$2,500 (Panebianco case) June 1969, testimony of McLean (621) and Viera (696-697).
5. Receipt of \$1,000 (Capozucca case) October 1969, testimony of McLean (629).
6. Receipt of \$400.00 December 1969, testimony of White (1008, 1009).

Joseph Fasanella, a government witness with whom King resided when separated from his first wife, at the first trial stated that in the end of October or beginning of November 1969 he saw King with \$12,000 cash (756). Further that during the first ten days of December 1969, Frank King received at least \$600.00 and that while King resided at Fasanella's apartment from October 1969 through January 1970, King related that he had earned \$200,000 and spent \$100,000 (764-765, 769-773).

In spite of this testimony by government witnesses indicative of a large cash horde and receipt of large sums of money at the end of 1969, the agent with prodding from the government prosecutor (both trials) had the audacity to relate that his investigation revealed no availability of cash at the inception of 1970. It should be further noted that the defendant received a 90 day letter (civil assessment) from the Internal Revenue Service with regard to the year 1969 charging him with additional income approximating \$9,000 based on the aforementioned testimony. It should be further noted that although the income tax investigation of King was initiated in November 1974 (404) no indictment was obtained until July 28, 1976, i.e., after the acquittal of the first charge. Moreover prior to the date of the inception of this investigation November 1974, entire information for the preparation of

the 1973 income tax return was given by King to his accountant in September 1974 (662). Further exculpatory evidence with regard to the fact that King believed the returns were lost i.e., wire tapped conversation with the Internal Revenue Service in December 1973 prior to any Internal Revenue Service investigation, was refused admittance into evidence (694-695).

The expenditures as summarized by the examining officer for 1970 exceeded the tax payer's reported income by only \$1,723.00 and had the following pervasive errors.

1. Although charging him with alimony payments for the full period April 1970 to December 31, 1970, the agent was well aware of the fact that Mrs. King informed him that the defendant missed paying her one fifth of the time. (Memo of interview with Mrs. King dated December 17, 1974, Exhibit A). The inception of these payments whether it be the first or second week in April could not be ascertained. Thus at a minimum, assuming payments as the agent did from the inception of April, payments charged to King exceeded the actual amount by \$975.00.

2. The agent charged King with expenditures of \$1,440.00, an allowance he claimed as a deduction on his return. It should be noted that no proof of expenditures of this nature were submitted into evidence.

The investigation and grand jury failed to reveal whether Mrs. King signed the 1970 return. Handwriting exemplars were obtained by the government and it is assumed analysis was made of same. In view of the fact that no testimony relating to same was introduced it would appear that contrary to the government's assertion on page 30 of its brief that the government's report indicated the contrary. Moreover, this material should have been made available to the defendant as Brady material. Further the government well knew that King moved to a new apartment at 15 St. Andrew's Place, Yonkers, New York in October 1970, thus indicative of the fact that in April 1971 when he filed this return the venue was not the Eastern District of New York. It is apparent that Assistant United States Attorney Puccio was well aware of this defect and attempted to conceal same from the defendant in violation of Rule 16 and the government's obligations with regard to Brady material.

Testimony by numerous witnesses pointedly revealed that Assistant United States Attorney Puccio was out to get Frank King.

1. Matarasso, Sr. (4900-4908, 1st trial).
2. Matarasso, Jr. (5052, 1st trial).
3. Heffernan (3970, 2 and 3, 1st trial).
4. Roman (2028, 1st trial).
5. White (1200-10, 1st trial).

POINT I
COLLATERAL ESTOPPEL

It is now well settled that collateral estoppel, an ingredient of the 5th Amendment guarantee against being placed in jeopardy twice for the same offense, applies to criminal prosecutions and precludes prosecutions when an issue of ultimate fact has been determined in a defendant's favor by a valid and final judgment in a prior proceeding between the same parties. Ashe v. Swenson, 397 U.S. 436 (1970). The defendant has the burden of establishing that the issue he seeks to foreclose in the second litigation was "necessarily" resolved in his favor by the first verdict. This burden of proof is a heavy one since "it usually cannot be determined with any certainty upon what basis the previous jury reached its general verdict." U.S. v. Cala, 521 F. 2d 605, 608, 609 (2nd Cir., 1975).

Collateral estoppel, as a constitutional defense, serves to further four separate policies, foremost among which is the policy of protecting the defendant from forced litigation of facts found in his favor. A second function is to preserve the finality of prior favorable adjudications, thus enabling the defendant to rely on them. The third policy is to prevent the waste of judicial resources caused by duplicative proceedings. The two latter policies serve to protect the

defendant by effectively precluding the state from "subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity." The fourth policy is to protect the defendant from "the danger of prosecutorial harassment". Collateral estoppel prevents an overzealous prosecutor from bringing successive prosecutions to gain a conviction or to punish the defendant through multiple trials. It was also stated that the prosecutor's use of perjured testimony is an example of where defendants have been deprived of a fair trial. See Friendly, "Is Innocence Irrelevant?", 38 U.Chi. L. Rev. 142, 151-157; U.S. Ex Rel DiGiangiemo v. Regan, 528 F. 2d 1262 (2nd Cir., 1975); Mayers and Yarbrough, Bis. Vexari: New Trials and Successive Prosecutions, 74 Harv. L. Rev. 1, 31-33 (1960); Greene v. U.S., 355 U.S. 184, 187 (1957). See also U.S.A. v. John McGrath, (2nd Cir., 1977) slip opinion number 1282, September 2, 1976, decided July 19, 1977.

Judge Friendly made it eminently clear that a narrow construction of Ashe will not be countenanced by the Second Circuit.

It is eminently clear that due the agent's pervasive testimony and the action of the Assistant United States Attorney to "get King" and conceal exculpatory material that these actions fall squarely within the aforementioned rationale.

See also U.S. v. Celentano, supra. It is manifestly clear that witnesses were threatened, offered rewards (police pensions, etc.) so that they could be "squeezed" in order to effectuate the prosecutor's apparent personal vendetta "we want King."

Society is the ultimate loser when in order to convict the guilty it uses methods that lead to decreased respect for the law.

Governmental misuse of power breeds only apathy, contempt and more lawlessness, a lesson recently and painfully learned. In the words of Justice Brandeis, written 40 some odd years ago, "Olmstead v. U.S., 277 U.S. 438, 485 'dissent'".

"Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill it teaches the whole people by its example. Crime is contagious. If the government is a law breaker, it breeds contempt for all; it invites every man to become a law unto himself it invites anarchy."

It should be noted that in the opinion regarding Ashe v. Swenson, supra, it was stated that if similar evidence is to be used to prove more than one offense, one trial should be had to avoid any possibility of claims of estoppel. In the extant

situation this was not followed. To allow a United States Attorney to violate his oath and duty by abusing the power of office and transforming the Justice Department into a den where subrogation of perjury and low scheming becomes a way of life would frustrate the aforementioned enunciated principles.

POINT II

EVIDENCE

Count 1. The principle element relied on by the government is that during the years in question the taxpayer's expenditures exceeded the funds that were available to him. "The expenditure method of determining income for tax purposes is fraught with danger for innocent taxpayers and the evidence submitted should be closely scrutinized." *Bellflower et al. v. U.S.*, 59-2 U.S.T.C. 9599 (D.C.-Ga.).

One of the serious errors of the expenditures less funds available method is that it does not make allowance for funds available at the beginning of the taxable year. The government in determining the amount of funds applied in excess of funds available for the year 1970 completely ignores the excess of funds available at the beginning of the previous years. This becomes manifestly clear when one reads the first trial in which it is alleged that Mr. King received numerous amounts of money, specific amounts being received during the period October-December 1969 indicative of a carryover of funds from the prior year available for use in the year 1970.

Moreover the pervasive errors of the government's expert witness are relative to computation of these expenditures, would appear to frustrate the rules prescribed for the use of this type of proof.

Count 4. Ann King, Frank King's second wife, had a nervous breakdown (approximately March 1974) and became mentally ill at the time that the 1973 income tax return was due. All during 1974 she was in and out of hospitals for psychiatric care. It should be noted that in September 1974 the defendant gave all information necessary to his accountant for preparation of his 1973 return. The Internal Revenue Service investigation commenced in November 1974.

The Internal Revenue Service has stated that any sound reason advanced by a taxpayer as the cause for delay in filing the return will be carefully analyzed to determine whether the penalty for delinquency should be asserted. In its manual as examples as a sound cause for late filing which, if established will be accepted as reasonable cause, are (a) death or serious illness of the taxpayer or a death or serious illness in his immediate family. There can be no doubt as to the serious illness of Mr. King's wife during this period of time.

Recently the Criminal Section of the Justice Department stated that "if a taxpayer makes what amounts to a pure and simple voluntary disclosure, I am of the opinion that it would be difficult if not impossible to prove wilfulness and therefore that particular case would in all probability have to be declined for criminal prosecution." (Speech of C. R. Namorato, Chief Criminal Section, Tax Division, Justice Department, November 5, 1976). It is obvious that Mr. King's attempt to

file his return in September and the disclosures pertaining to his income tax returns made to his accountant would fall within the aforementioned rationale expressed by the Chief Criminal Section, Tax Division, Justice Department.

Count 5. It is apparent that based on income tax return filed by Mr. King for 1973 that the government could not prove any indicia of wilfullness or intent to evade tax. The government's proof failed to overcome the amount of income reflected on the return filed by Mr. King based on information submitted to his accountant in September 1974 two months prior to the initiation of the Internal Revenue Service investigation.

Count 6. False when used in a criminal statute does not mean simply incorrect or untrue. It means deceptive; assumed or designed to deceive; a statement made in an attempt to deceive or mislead. Based on the wire taps which were not admitted into evidence it is apparent that the defendant did believe that the returns were lost or misplaced. Therefore, there can be no violation of this statute. Further it would appear that based on the fact that the government in its records had knowledge of the actual facts that the government could not be misled with regard to the claim that the prior returns were timely filed. Government records would reveal what they had received and therefore no action with regard thereto with regard to the government's prejudice could have occurred.

POINT III

VENUE

When concealment of a material fact with regard to exculpatory material pertinent to a violation allegedly occurring in an Eastern District is concealed by an Assistant United States Attorney no waiver can be deemed to have occurred with regard to this action.

POINT IV

SELECTIVE PROSECUTION

Based on the aforementioned facts there can be no doubt that Frank King was the victim of a personal vendetta of Assistant United States Attorney Puccio. Therefore selective prosecution is directly applicable. Tyrants in the past have invariably supported their actions by the claim that they were acting in the public interest. However in the extant situation it is obvious that there was a personal vendetta with regard to this prosecution.

CONCLUSION:

THE JUDGMENT OF CONVICTION SHOULD
BE REVERSED.

Dated: New York, New York
September 9, 1977

Respectfully submitted,

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A1
EXHIBIT A
MEMORANDUM OF INTERVIEW

In Re: FRANCIS E. KING
117500650

Date: December 17, 1974

Place: 15 Split Rail Place
Commack, New York

Present: CATHERINE KING, Witness
ANTHONY VALENTI, Special Agent
ROY WEINSTEIN, Special Agent

Mrs. CATHERINE KING, the former wife of the subject, was interviewed tonight. In answer to our questions, Mrs. KING stated that she and her husband separated in April of 1970 and that the separation became legal in September of 1971; that she obtained a divorce from FRANCIS KING in July of 1972; that her attorney was VINCENT BERGER, Jericho Turnpike; and that her husband was represented by a Mr. FRIEDMAN, 655 Madison Avenue, New York, New York.

Mrs. KING stated that during the time of separation from her husband (4/70 to 7/72), she received \$125.00 per week from her husband and that he usually missed paying her one fifth of the time; that after the divorce became final in July of 1972, the decree provided for her to receive \$25.00 per week in alimony and \$25.00 per week in child support for each of the four children for a \$125.00 per week receipt; that after the divorce became final, KING usually missed one out of four payments; and that KING stopped all payments seven months ago (4/73). Mrs. KING stated that her ex-husband made the payments in cash, giving it to her children who then gave it to her. Mrs. KING added that the last time she saw FRANCIS KING was in May of 1973 when one of her sons was involved in an auto accident.

In answer to other questions, Mrs. KING stated that the divorce decree provided that the house at 15 Split Rail Place, Commack, N. Y. revert to her sole ownership; that while she was married to FRANCIS KING she maintained a small checking and savings account at the Security National Bank; that she knows of no other bank accounts belonging to KING; that she was married to KING on January 2, 1954; that she did not file a tax return with FRANCIS KING for 1971 and that the divorce provides for both her and her ex-husband to claim two exemptions for the children.

Roy Weinstein

Anthony Valenti

EXHIBIT A

BEST COPY AVAILABLE

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Q Under what circumstances did you have occasion to go to Mr. Puccio's office?

A My office had received a telephone call and I was directed to report and see Mr. Puccio.

Q In other words, you were directed in the course of your duties as a police lieutenant?

A Yes, sir.

Q When you got to Mr. Puccio's office, did you have a conversation with Mr. Puccio?

A Yes, I did.

Q Will you tell us in substance, please, what did he say to you and what if anything did you say to him?

A I recall they asked who I was when I arrived at the United States Attorney's office -- they asked who I wished to see. I said "Mr. Puccio." I was then ushered in and I saw Mr. Puccio. One of the first things he said, "I called you down here because it is about your son. I want to talk to you about your son."

He said, "He worked with Frank King and we want him to help us get Frank King. We can indict him. He may beat the indictment, but he will lose his job. If he helps us get Frank King --" my son who at that time -- who had a heart condition, which Mr. Puccio was aware of -- "If he helps us we will see that he gets his three-quarters

6 Matarasso, Sr.-direct

disability that he applied for."

Q That he would be able to get out of the police department with a disability discharge?

A I told him that I would speak to my son, because he was told I had great influence over my son. I said, "I certainly will try to help. I will speak to my son."

MR. SLOTNICK: May we know when the conversation took place?

THE WITNESS: September of 1975.

MR. EVSEROFF: September of 1975.

THE WITNESS: Mr. Puccio at the time said, "After you get through speaking to him, I will call your son down again and when I do I will let you know so you can come down here with him."

I saw Mr. Puccio again --

(Continued next page.)

1

2 Q On the second occasion?

3 A On the second occasion.

4 Q Tell me this, Lieutenant, after you got through
5 with your first visit with Mr. Puccio, did you go, in fact, to
6 speak with your son?

7 A Yes, I did.

8 Q Did you suggest to your son -- what did you
9 suggest to your son?

10 A If he knew anything about Frank King, help the
11 Government, cooperate with the Government, to get Frank King.

12 MR. PUCCIO: Objection. This is hearsay.

13 MR. SLOTNICK: Objection on behalf of Frank King.
14 I think it's germane to our issue with regard to this.
15 Your Honor, by blocking this from the jury's view,
16 we'll be eliminating part of my cross examination of
17 this witness. I think it's obvious at this point.
18 This has been testimony with regard to the Government's
19 desires as to my client by other witnesses.

20 MR. PUCCIO: My objection, sir, is on hearsay
21 grounds; that is this witness relating what his son said.

22 MR. EVSEROFF: Your Honor, I think there is an
23 exception to the hearsay rule. I think it's part of
24 the res gestae. I think it's motive testimony with
25 respect to the reason for the prosecution by the Govern-

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Matarasso, Sr. -- direct/Esveroff

ment.

MR. SLOTNICK: Also a question of probative weight, your Honor. I think it's more important to the jury to hear this conversation so that we would know the state of mind of the individuals rather than blocking it.

MR. PUCCIO: Your Honor, I object to testimony being offered to show this witness's state of mind or Matarasso's state of mind.

THE COURT: It is hearsay, but I'm going to allow it to come in so the jury can understand the actions of Matarasso which were contemporaneous with these discussions.

You may proceed; objection overruled.

A In fact, if I recall, I believe he said, "We don't want your son... We want Frank King."

Q What did your son say to you when you confronted him with Mr. Puccio's offer?

A He said, "Pop --"

MR. PUCCIO: I object to this, Judge.

THE COURT: I'll allow it.

A He said, "Pop, I didn't do anything wrong. As far as I know, Frank King didn't do anything wrong. I don't know -- Frank King and I, the team, we just did our job. We did nothing. We didn't do anything wrong. How can I testify

3 Matarasut, Sr. - direct/Evseroff

2 against him? What do you want me to do, make up a story?"

3 Q After your son told you this, did you have occa-
4 sion to see Mr. Puccio again?

5 A Yes.

6 Q When was that, Lieutenant?

7 A It was shortly after that first meeting. I
8 received a phone call from my son while I was still in bed; that
9 he had been directed to report to Mr. Puccio's office. I said,
10 "Wait a minute."

11 Q In any event, did you go to Mr. Puccio's office?

12 A Yes, I did.

13 Q Did you have a second conversation with Mr. Puccio?

14 A Yes, I did.

15 Q Was your son there at the second conversation?

16 A Yes, I did (sic).

17 Q We're talking about September or thereabouts,

18 1975?

19 A Yes.

20 Q Prior to the indictment in this case?

21 A Yes.

22 Q What was the second conversation with Mr. Puccio
23 with your son there in the office, here in this Building?

24 A I tried to get my son, told my son to please
25 cooperate with the Government, you know, to see if he can help

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Matarasso, Sr. - direct/Evseroff

Mr. Puccio get Frank King. My son said, repeated the same thing, said "Frank King, as far as I know, did nothing wrong. Whatever he might have done before I don't know, but he sure didn't do anything with me."

Q What did Mr. Puccio say about this?

A I don't recall.

Q What did he say with respect to the subject of an indictment?

A He said, told me the day before that "We're going to indict him unless he helps us. If he beats the indictment, he's going to lose his job. He certainly won't get his job back."

Q After these two meetings with Mr. Puccio, in fact, in December of 1975, was your son indicted?

A Yes, sir.

MR. EVSEROFF: You may enquire, Mr. Puccio.

THE COURT: Before you do so, any other defendants?

MR. EVSEROFF: I'm sorry.

CROSS EXAMINATION BY

MR. SLOTNICK:

MR. SLOTNICK: Very few, your Honor.

Q Lieutenant Matarasso, have you ever told me what you've just testified to on the witness stand?

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Matarasso, Sr. - cross/Slotnick

4908

A No, I heard no testimony.

Q You discussed this matter with Mr. Evseroff;
is hat correct?

A That's right, sir.

Q Did he ever suggest to you that this case has
anything to do with the other investigation that Mr. Puccio
told you about?

THE COURT: Don't answer that.

Q On how many occasions did you meet with Mr. Puccio?

A Twice, prior to this case, twice.

Q I'm talking about prior --

A Prior to the trial --

Q September of 1975?

A Twice.

Q Is there any question and is it clear in your
mind that Mr. Puccio said "We want to get Frank King?"

A Yes, words to that effect. In summary, that's
what he said.

Q There's no question that he told you to tell your
son to help the Government get Frank King?

A Words to that effect, yes.

Q What was his manner, as you observed him on the
first day?

A The first day he was cordial.

1 4

Matarasso-direct

2 he was on a pad.

3 Were you ever on a pad?

4 A Absolutely not.

5 Q Did you ever shake down bookmakers?

6 A No, sir.

7 Q Did you ever shake down prostitutes?

8 A No, sir.

9 Q Did you ever take \$2 off a merchant or anything
10 off a merchant to let him be open on a Sunday in violation of
11 the blue laws?

12 A No, sir.

13 Q Did you ever make a dishonest buck in the
14 police department?

15 A No, sir.

16 Q There came a time when you went down to the
17 United States Attorney's office, and you have heard testimony
18 about that; is that right?

19 A Yes, sir.

20 Q And you had a conversation with Mr. Puccio?

21 A Yes, sir.

22 Q Why are you here in this case, MR. Matarasso,
23 tell the jury.

24 A Because I could not and would not give any
25 kind of testimony against Frank King.

Matarasso-direct

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2 Q And were you told that by Mr. Puccio?

3 A Excuse me?

4 Q Were you told that by Mr. Puccio?

5 A Yes, sir.

6 Q Did he tell you in words or substance that if
7 you would not be a witness against Frank King you yourself
8 would be and in fact are a defendant in this case, and that
9 has happened?

10 A Mr. Puccio told me that I would lose my job
11 and it would cost me a good deal of money even if he didn't
12 beat me in Court.

13 Q Now, in connection with all the testimony in
14 this case having to do with wiretap evidence, you have heard
15 all the testimony here about there was a wire in this case
16 and a wire in that case and a wire in the other case: You
17 have heard all of that?

18 A Yes, sir.

19 Q Would I be correct in assuming that within the
20 purview of this entire indictment, all of these packages
21 here (indicating), there is only one wire which you
22 obtained and being affiant upon which an order was given;
23 am I correct?

24 A That is correct.

25 Q And that is the Bidhead case; is that right?

Matarasso-cross/Slotnick

he was giving you money in Long Island, where were you?

A In December of 1970?

Q Yes, when he testified he was giving you money in Long Island.

A I was at Concord Hotel in Kiamesha Lake.

Q Do you think White knew that?

A Excuse me?

Q Do you think White knew that when he testified?

A Evidently not.

Q Nevertheless, Mr. Puccio told you if you wouldn't be a witness against Frank King, then he would hurt you; is that correct?

A In essence, that's exactly what he did.

Q By the way, Frank King was a detective, was he not?

A Yes.

Q He wasn't a lieutenant or sergeant or a captain?

A No, sir, he was a detective.

Q He wasn't the chief?

A No, he was another Indian.

Q In pursuit of narcotics dealers?

A Yes, sir.

Heff n-Direct-Alch

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2 also contacted the line organization attorney and told there
3 were no attorneys available at this time. Mr. Puccio
4 told me no, he wanted to see me.

5 Q What did you do when you found out there were
6 no attorneys available?

7 A I called Mr. Puccio by telephone. He still
8 wanted me down, however.

9 Q As a result of Mr. Puccio's insistence,
10 what did you do?

11 A Went down without an attorney and met with
12 him.

13 Q Did you have a conversation with him?

14 A Yes, sir.

15 Q Tell me what was the conversation?

16 A He said in substance he wanted to get Frank
17 King. He told me I was not indicted, but he'd go into
18 everything I ever did and get me indicted and if he couldn't
19 convict me he'd make sure I lose my job, and he said it
20 would cost me a lot of money.

21 Q Did he tell you why he had these intentions?

22 A He wanted me to give him information about
23 Frank King and my response was I have no knowledge of any
24 wrongdoing by Frank King.

25 Q In November of 1975 did you again receive a

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Q What happened?

A Detective Powell then called the DEA lawyers back again and he was informed by them that no such conversation had taken place as Mr. Puccio stated.

MR. PUCCIO: I object to this hearsay.

THE COURT: Sustained.

Q As a result thereof did you go down that day to Mr. Puccio's office?

A No.

Q Was it ultimately postponed to another day?

A Yes.

Q What was the reason for it being postponed?

A There were no lawyers available.

Q Did you subsequently report to Mr. Puccio's office with an attorney from the Detective's Endowment Association?

A Yes, and we met with him.

Q Did you have a conversation with him?

A My attorney did.

Q Were you present?

A Yes, I heard the conversation. Mr. Puccio said I was not indicted at the time but felt he could indict me and wanted me to give information relative to Frank King, if I were to give such information he would promise me certain things, one being that I would be able

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to retire, I'd be given my pension. Subsequent to that,

That attorney that was present with me said he only has 13 years as a police officer and Mr. Puccio said it can be worked out.

Q How did the meeting end?

A The meeting ended and Mr. Puccio requested that I appear without counsel and without any DEA delegates with me on the subsequent Friday.

(Continued on the next page.)

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A It means, I don't know how to say it in English.

Q Say it in Spanish.

A It means, let me tell you the way I understand it.

Q Right, as best you understand it.

A Yes, it means that they cannot prosecute you for anything.

Q In other words, right, for coming here and testifying against Frank King, you are a free woman?

A Yes.

Q That is marvelous.

MR. SLOTNICK: I move 3500-29 into evidence.

MR. PUCCIO: No objection.

THE CLERK: Government's Exhibit 3500-29 marked in evidence.

BY MR. SLOTNICK:

Q This is a copy of the immunity letter.

Do you remember Mr. Fusco reading that to you?

A Yes.

Q That is 3500-29 into evidence.

Have you ever had occasion to read it yourself?

A Yes, I read it.

Q And it says if you testify against Frank King you are a free woman?

A Yes.

1
2 were you?

3 A No.

4 Q You were working -- I forgot?

5 A In a patrol precinct in Brooklyn.

6 Q Were you catching cases?

7 A No, a patrol sergeant.

8 Q What were you doing as a patrol sergeant?

9 A Normal patrol supervision, day to day.

10 Q Checking the neighborhood, the streets? What
11 is "patrol supervision"?

12 A Basically uniform force, the radio cars and the
13 men on foot. The cars respond to the jobs from the radio
14 dispatcher.

15 Q So at that time you hadn't see Frank King for
16 how long a period of time, if you remember?

17 A Since December of 1970.

18 Q When you saw Frank King in December of 1970,
19 you weren't with the SIO at that time, were you?

20 A No.

21 Q This is October or November of 1970 the first
22 time anyone spoke to you about Frank King?

23 A That's right.

24 Q Do you remember who it was?

25 A Mr. Puccio.

1
2 Q Do you remember what he told you -- withdrawn.
3 Did he tell you that "we want information
4 against Frank King and you can supply it to us" or words to
5 that effect?

6 A To that effect, probably.

7 Q Did he highlight to you that he was interested
8 in prosecuting Frank King?

9 A He indicated, yes.

10 Q Did you tell him that it had been some six years
11 since you worked with Frank King?

12 A Yes.

13 Q How long did you spend in his office the first
14 time?

15 A Around 35, 40 minutes.

16 Q Were you represented or were you alone?

17 A I was represented by --

18 Q By counsel, David Fallek?

19 A Correct.

20 Q And did you tell Mr. Puccio anything at that time?

21 A No.

22 Q Did you tell him you had no information?

23 A I didn't tell him anything.

24 Q You never said a word?

25 Did Mr. Puccio tell you if you didn't cooperate

1
2 against Frank King, that you would be indicted?

3 A If I remember correctly he said that he had
4 testimony against me whereby I could be indicted on felony
5 counts.

6 Q Did you say anything to him when he said that
7 to you?

8 A No.

9 Q Did you discuss it with your lawyer afterwards?

10 A Yes.

11 Q Did you then have another occasion to meet with
12 Mr. Puccio?

13 A Yes.

14 Q When was that?

15 A I believe four or five days later.

16 Q Did you tell Mr. Puccio that you'd be willing to
17 cooperate against Frank King at that meeting?

18 A Again, Mr. Fallick spoke in some length at that
19 meeting.

20 Q At that meeting, is it not true, that Mr. Fallick
21 attempted to strike up a bargain with Mr. Puccio?

22 Is that correct?

23 A I don't know if that is correct.

24 Q A deal?

25 A In other words, that he attempted at that meeting

1
2 to work out an arrangement?

3 Q Right.

4 A An arrangement was worked out. It was started
5 to be worked out, I believe, at that meeting.

6 Q Isn't it a fact that it was Mr. Puccio that
7 approached you with a deal?

8 Do you remember who first initiated the transaction?

9 A He instigated the conversation relative to the
10 agreement.

11 Q And he told you that if you testified -- if you
12 gave testimony against Frank King, that all would be forgiven
13 with regards to the felony counts that you had hanging over
14 your head?

15 A Not in those words.

16 Q Do you remember whether that's the substance of
17 what he said?

18 A I was to testify or to give testimony --

19 Q Against Frank King?

20 A Not just Frank King.

21 Q He wanted more testimony?

22 A Pardon me?

23 Q Not just against Frank King, but against the
24 whole team you worked with, Matarasso and Heffernan?

25 A Correct.

(The trial then continued within the presence of the jury.)

THE COURT: Proceed.

CROSS-EXAMINATION

BY MR. SLOTNICK: (Continued.)

Q So there came a time when Mr. Puccio told you that he was desirous of testimony against Frank King; is that correct?

A Against Frank King.

Q And when -- withdrawn.

I show you 3500-20 and ask whether that is familiar to you?

A Yes.

Q That is the immunity agreement whereby you agreed to testify against Frank King and others and that you would not be prosecuted for any wrongdoing that you may have occasioned.

A That is correct.

Q Do you remember seeing this document signed by Mr. Puccio?

When, when was the first time that you saw this document, referring to 3500-20 in evidence?

A Around the day of the grand jury appearance.

Q But before you went into the grand jury, you were

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Q

Well then, Mr. Puccio just sent your attorney or gave your attorney a letter indicating that you were to receive immunity if you testified against Frank King?

5

A

No.

6

Q

How did this agreement come about, did you ask for it?

7

8

A

The agreement was worked out with the two attorneys.

9

10

Q

Right.

11

12

Now before this agreement was worked out, did you give Mr. Puccio any testimony, did you tell him any stories about Frank King?

13

14

A

Before the agreement was made?

15

Q

That is correct.

16

A

No.

17

Q

And isn't it a matter of fact that before the agreement was made you said nothing to Mr. Puccio?

18

19

A

Correct.

20

Q

Isn't it also a matter of fact that in this immunity agreement is mentioned the name of one police officer other than yourself: Does it not?

21

22

23

24

Isn't it a matter of fact that this agreement mentions only the name of Frank King?

25

A

That is correct.



APPLEMAN

AFFIDAVIT OF PERSONAL SERVICE

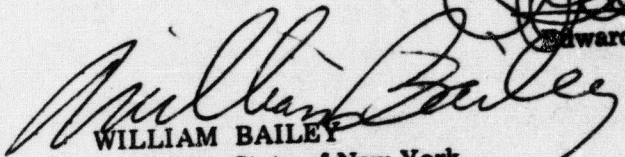
STATE OF NEW YORK
COUNTY OF RICHMOND ss.:

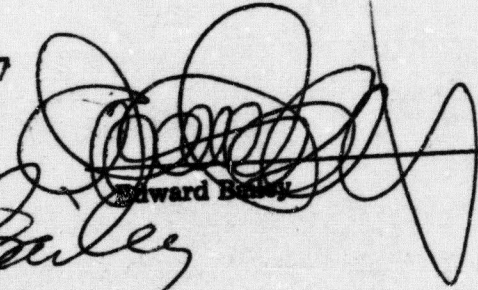
EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 12 day of Sept. ,1977 at No. 225 Cadman Plaza East., Brooklyn, NY

deponent served the within Reply Brief upon U.S. Atty., East. Dist of NY

the Appellee herein, by delivering 3 true copy(ies) thereof to him personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Appellee therein.

Sworn to before me this
12 day of Sept. 1977


WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1978


Edward Bailey